REMARKS/ARGUMENTS

Favorable reconsideration of this application, in light of the following remarks, is respectfully requested.

Claims 1, 3-13 and 15-24 are pending in this application. No new matter is added.

In the outstanding Office Action, Claims 1, 3-13, 15-20 and 22-24 were rejected under 35 U.S.C. §103(a) as unpatentable over U.S. 6,529,506 (Yamamoto) in view of U.S. 6,414,960 (Kuhn); and Claim 21 was rejected under 35 U.S.C. §103(a) as unpatentable over Yamamoto and Kuhn in view of U.S. 6,446,037 (Fielder).

A telephone interview was conducted with Examiners Clarence John and Jude Giles on August 4, 2010, to discuss the claimed invention and the outstanding Office Action. Applicant thanks the Examiners for their time and comments at the interview.

At the interview, various arguments consistent with those presented herewith were discussed. In response, the Examiners suggested filing a Request for Reconsideration, and the Examiners indicated these arguments would be reconsidered upon receipt of the filing. This Request for Reconsideration is submitted in accordance therewith.

Claim 1 recites:

> A network interface device connectable to a network, the device being arranged to receive digital audio data representing an audio signal and to launch data packets representing the digital audio data onto the network, the device comprising:
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> ***an audio level detector*** having a processor programmed to generate, from audio properties of the digital audio data, audio level data representing ***an audio level of the audio signal***; and
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> a packetiser operable:
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> to ***format the digital audio data into audio data packets*** to be launched onto the network, and
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> to ***format the audio level data into audio level data packets, separate from the audio data packets***, to be launched onto the network.
>
> [Emphasis added].

As emphasized above, Claim 1 defines a network interface device which includes an audio level detector. The audio level detector generates, from a digital audio data, audio level

data representing an audio level of an audio signal. The device further includes a packetizer. The packetizer formats the digital audio data into audio data packets. In other words, the packetizer formats the digital audio data content into packets of the audio content.

Additionally, the packetizer formats audio ***level*** data (of the digital audio data content) into audio level data packets. These audio level data packets are separate from the audio data packets. Both of these types of packets are to be launched onto a network. It is respectfully submitted the cited references are deficient in disclosing or reasonably suggesting these features.

Prior to addressing the art of record, an exemplary result of the claimed invention will be described in relation to Figures 4 and 11. As described in page 14 of the specification, Figure 4 schematically illustrates part of the functionality of an enhanced network interface card (ENIC). The ENIC comprises a demultiplexer 100, a level detector 120 and a packetizer 140. The level detector 120 detects an audio level of an audio stream, which is then routed to the packetizer 140. On the other hand, as discussed on page 15 of the specification, the audio data itself does not pass through the level detector 120 and is packetized separately.

Consequently, one particular use of such a system is in a multi-language situation, where audio level packets can be transmitted separate from the audio contents packets themselves, and further, audio content packets and audio level packets can be transmitted separately from a video packet. That is, in a multi-language situation, a particular language audio packet and audio level packet can be transmitted with the video content packet.

Another particular use is shown in Figure 11, which provides a schematic illustration of a part of a screen display of a graphic user interface showing a graphical representation of the audio level data 210 as it corresponds to a video presentation 200. As a result, a user is able to receive audio level information of a video transmission without having to listen to the audio contents itself. Consequently, a screen can be used to display a plurality of video

presentations simultaneously, while a user is able to monitor audio level data through a graphical representation.

As to the cited references, the Office Action at item 13 alleges Yamamoto describes the claimed packetizer, while in item 14 of the Office Action Kuhn is relied upon for describing the claimed audio level detector. Prior to going into the details of the Applicant's position regarding items 13 and 14 of the Office Action, an outline is provided below to emphasis the primary issues raised by the art and the rejection(s).

First, it is not clear how Yamamoto describes the claimed packetizer. In particular, the relied upon sections in Yamamoto do not describe a device which ***receives*** an audio signal and forms two types of packets, which are separate from each other - namely audio content packets and audio level packets.

Second, it is not clear what rationale is relied upon in the Office Action for combining the teachings of Kuhn with those of Yamamoto, and further how such a combination results in the claimed invention.

As to the first issue, items 3 and 13 of the Office Action rely on columns 2 and 22 of Yamamoto describe network interface arranged to receive digital audio data representing an audio signal and to launch data packets representing the digital audio data onto a network. However, as previously noted, the features described in these sections (columns 2 and 22) of Yamamoto are incompatible. Further, the Office Action does not appear to provide a further rationale to support the combination of these incompatible systems.

Specifically, column 2, lines 39-53 of Yamamoto describe features shown in prior art Figure 19 of Yamamoto, which is related to embedding a watermark. Figure 19 does not show a packet network (for example, compare with network N of Figures 4, 6 or 17 of Yamamoto). Further, Figure 19 merely shows that the audio data is in a file (there is no

receiver). Moreover, column 2, lines 39-53 of Yamamoto does not mention any variant of formatting, packetizing or networking.

As a result, the record is not clear as to the basis for the statement in item 3 of the Office Action, which recites that it is noted that Yamamoto teaches a network interface device connectable to a network where the device is being arranged to ***receive*** digital audio and to launch ***packets*** representing the digital audio onto the ***network***.

Further, the Office Action states, citing to column 2, lines 48-53 that the digital audio data is formatted according to digital audio data recorded as the audio data file ODau and a signature data embedded audio data file SDau. Applicant presumes this statement means that the audio data files ODau and SDau have a format of a particular file, in which the audio data is stored. If such is correct, then it is respectfully submitted that such an interpretation clearly teaches away from a packetizer performing formatting because ***files are not stored in packets - rather, files are stored as files***. In other words, it is respectfully submitted that a person of ordinary skill in the art would not interpret the above-noted audio data files as directed towards a packetizer having a packet formatting function, as required by the claims.

Furthermore, column 22, lines 56-62 describes features of Figure 4 of Yamamoto which is an entirely separate system of that of Figure 19 (column 2 of Yamamoto). Column 22 of Yamamoto describes digital audio attribute information as being transmitted in one of several transmission modes, including being arranged in a fixed position in the audio data or being transmitted ***as a separate file***.[1] As previously noted, ***files are not packets and files are contrary to packets***.

Further, Yamamoto does not describe the attribute information as encompassing a watermark. Quite the contrary, watermarks are generally understood as something which is ***embedded*** into a content for copy-protection. By removing the watermark from the content,

[1] Yamamoto, column 22, line 60-61.

and transmitting the watermark separately therefrom, one of ordinary skill in the art would understand that any copy-protection features of the content would be lost.

To this issue, regarding item 5 of the Office Action, the Examiner alleges that the embedded watermark would be transmitted as separate data in a separate packet to the content. Applicant respectfully submits that an ***embedded*** watermark cannot be transmitted as separate data relative to the contents, because by definition, an ***embedded*** watermark is ***embedded*** into the content. Accordingly, the comments made in item 5 of the Office Action are unclear and require clarification.

As a result, the record is not clear as to what device or function in Yamamoto is being relied upon for the claimed packetizer because the Office Action cites two different and contrasting sections of Yamamoto. Nonetheless, Applicant respectfully submits that a combination of columns 2 and 22 of Yamamoto merely describe (1) a first prior art device operable to store plain and embedded watermarked audio data in files, and (2) a second unspecified device at a "distribution end" which is operable to transmit attribute information (***i.e. not an embedded watermark***) as a separate file.

Consequently, it is respectfully submitted that both the Office Action and the cited reference Yamamoto are deficient in describing each and every feature of the claimed packetizer, which formats digital audio data into audio data packets separate from audio level data packets.

As to the second issue, the Office Action relies on Kuhn to describe the claimed audio level detector. In particular, the Office Action relies on column 8, lines 61-67 and column 9, lines 1-15 of Kuhn to describe such features.

Kuhn is directed towards an audio visual sync system, where an average noise power level is measured from a continuously monitored audio channel, where a test generator will never inject a noise test signal greater than a user defined limit which is deemed to be a

threshold of audibility of a consumer grade television receiver.[2] The relied upon sections in Kuhn merely describe a process of determining whether to discard measurements in a synchronization scheme based on whether an average noise level reading is greater than -45 dBu. In summary, Kuhn merely describes detecting audio power levels.

However, the Office Action and references are lacking in any reasonable rationale for providing an audio level detection scheme into any of the devices described in Yamamoto.

In particular, the Office Action merely states that since Yamamoto and Kuhn are directed towards digital audio and video data processing, it would have been obvious to combine the teachings of each so that an AV synchronous test signal generator can be included in order to minimize or remove a noise signal. However, the technical accuracy of this rationale is unclear.

Specifically, it is unclear how a noise signal can be minimized or removed by an AV synchronous test signal generator. Kuhn is directed towards generating a noise signal to perform the AV synchronous test. In other words, the system in Kuhn is directed at adding noise to test AV synchronicity. Accordingly, the basis for this rationale provided in the Office Action is unclear because the rationale appears to say that it would have been obvious to add a noise generating device (from Kuhn) to the devices in Yamamoto to reduce noise in Yamamoto.

Consequently, it is respectfully submitted that both the Office Action and the cited references are deficient in describing each and every feature of the claimed packetizer and audio level detector, which formats digital audio data into audio data packets separate from audio level data packets.

Moreover, the Office is reminded that the Supreme Court established in *KSR Int'l Co. v. Teleflex Inc.* that a ***supported rationale*** reason must be provided as a basis for a conclusion

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[2] Kuhn, column 7, lines 17-29.

or a determination of obviousness. In *Ex parte Whalen*, 89 USPQ2d 1078 (BPAI, July 23, 2008) (precedential), the Board of Patent Appeals and Interferences (BPAI) applied the legal standard set forth in *KSR*:

> The *KSR* Court noted that ***obviousness cannot be proven merely by showing that the elements of a claimed device were known in the prior art***; it must be shown that those of ordinary skill in the art would have had some "***apparent reason to combine the known elements in the fashion claimed***." *Ex parte Whalen*, 89 USPQ2d at 1084, (quoting *KSR Int'l Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (2007) (citations omitted).
>
> [Emphasis added].

In the present case, the Office Action has failed to establish the devices in Yamamoto as meeting the claim limitations. Further, the Office Action has also failed to provide an ***apparent reason*** to perform the proposed modification (from Kuhn) to the devices of Yamamoto. Thus, the Office Action has failed to make a *prima facie* case of obviousness in its rejection of the claims and is non-responsive to the prior filed arguments regarding these issues.

For the reasons noted above, it is respectfully submitted the rejection of Claim 1 is deficient and should be withdrawn. Further, it is respectfully submitted the art of record fails to render Claim 1 unpatentable. Accordingly, it is respectfully submitted Claim 1 is allowable over the art of record.

Although varying in scope and/or directed to different statutory classes, Claims 18-19, 22 and 24 (and any claims depending therefrom) recite features which are also allowable over Yamamoto and Kuhn for substantially similar reasons as noted above regarding Claim 1. Therefore, it is respectfully submitted the rejection(s) thereto should be withdrawn.

Regarding Claims 11 and 23, Yamamoto at column 22, lines 35-62 and in particular at lines 46-47 merely describes reception of control data, rather than the reception of audio level data as required by Claims 11 and 23. As previously argued, there is no reasonable basis in

Yamamoto or the Office Action to arbitrarily swap the content of this auxiliary packet data, and since Kuhn does not teach the transmission of audio level data (it is used to control transmission, but is not transmitted), the combination of the two also does not teach the content of these claims.

For these reasons, it is respectfully submitted Claims 11 and 23 (and any claims depending therefrom) are also allowable over the combination of Yamamoto and Kuhn and the rejection(s) thereto should also be withdrawn.

Therefore, it is respectfully submitted the claims are in condition for allowance.

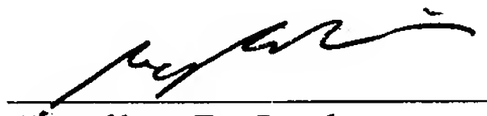
Consequently, in light of the above comments, it is respectfully submitted this application is in condition for allowance. Should the examiner disagree, the examiner is encouraged to contact the undersigned to discuss any remaining issues. Otherwise, an early Notice of Allowance is respectfully requested.

Respectfully submitted,

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413-2220
(OSMMN 08/07)

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, L.L.P.



Bradley D. Lytle
Attorney of Record
Registration No. 40,073

Marc A. Robinson
Registration No. 59,276